



# Civil Resolution Tribunal

Date Issued: October 1, 2019

File: SC-2019-001938

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jansen v. Careteam Technologies Inc.*, 2019 BCCRT 1149

B E T W E E N :

TREVOR JANSEN

**APPLICANT**

A N D :

CARETEAM TECHNOLOGIES INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## INTRODUCTION

1. The applicant, Trevor Jansen, provided studio headshots for the respondent, Careteam Technologies Inc. The applicant says the respondent failed to pay for the services and then illegally published and distributed the unpaid images. The applicant claims \$2,125 for studio headshot fees and \$2,000 in damages for unauthorized use of the images.

2. The respondent agrees it never paid the applicant for his services and does not deny using the headshot images. However, the respondent says it expected the applicant's bill to be about \$375 and is not willing to pay an "incorrect" bill. It also says it should not be expected to pay an additional license to use the images.
3. The applicant is self-represented. The respondent is represented by its Chief Operating Officer, Rob Attwell.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided to hear this dispute through written submissions.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The issues in this dispute are:
  - a. to what extent, if any, the respondent must pay the applicant \$2,125 in studio headshot fees, and
  - b. to what extent, if any, the respondent must pay the applicant \$2,000 for unauthorized use of the images.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proving his claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. The parties agree that in August 2018, the respondent requested headshots for its team of 8 people. There is no dispute that the respondent provided the service. The quality of the service is also not disputed. The issue in this dispute is the fee agreement. The applicant says his fees were \$375 for an individual headshot plus \$250 per additional team member. The respondent says it expected the fees to be \$375 total. The parties had no written contract setting out the agreed fees or their terms.
11. When the parties were arranging the service on August 8, 2018, the applicant sent the respondent a document by email with his corporate headshot pricing. The

applicant wrote that for the respondent's group size he could reduce the "initial sitting fee" from \$375 to \$250. The respondent replied "that's great" and asked the applicant if he was free the next Wednesday afternoon to coordinate the session. There are no other fee related documents in evidence apart from the August 8, 2018 email and corporate pricing document.

12. The applicant's corporate pricing document says that for \$375 the "shoot will include": up to one hour for individuals and more for teams; a private, online gallery of web-resolution proofs within five business days; three retouched, high-resolution images; and unlimited usage rights on all retouched images. The document also offers to "photograph your team for \$250 per additional headshot."
13. I infer from the submissions that the applicant photographed and produced individual headshots for 8 team members. The applicant sent the respondent an invoice dated September 12, 2018. The invoice explains that the applicant charged \$2,231.25 inclusive of GST, for "Studio headshots at the client's location, 8 sessions, 3 edits per subject, print and web resolutions delivered digitally".
14. The respondent says it had provided the applicant with a budget of only \$500, which the applicant denies. There are no documents in evidence showing that the parties discussed a budget. Therefore, I find there is insufficient evidence that they agreed on a budget.
15. The respondent also says the applicant's pricing model was unclear and led him to believe the total cost would be \$375. The respondent argues that the applicant should have defined the term "sitting", if he intended to charge per individual.
16. I find the details of the applicant's corporate pricing document could have been more clearly written. However, I find a reasonable interpretation of the document is that fees are charged per individual headshot, whether as for one person or one group (at the same time). If the \$375 was a total fee for each individual headshot, I find the phrase offering "\$250 per additional headshot" would not make sense.

17. Based on the above, I find the parties entered into a verbal contract that included payment for services. I find the parties might have thought they had an agreement on price, but there was no actual meeting of the minds on the actual price.
18. Even without a price agreement, I find the applicant is entitled to a reasonable amount for the headshots and services he provided. This is called contractual *quantum meruit*, which means value for work done (see for example, *Brown v. Catherine Brown doing business as Kennedy Crawford Design*, 2018 BCCRT 753, which is not binding on me, but I agree with its reasoning). Accordingly, I find I must determine the reasonable value for the applicant's services.
19. The respondent says that the applicant's invoice was higher than its other quotes, which were \$500 to \$700. It says its current photographer charges only \$50 per person. The respondent did not provide any documentary evidence on comparable quotes or details about the other photographers' services. It is reasonable to assume, photographers might have different prices based on factors such as their skill level and quality. As a professional photographer, I find applicant should know the value of his headshots. Without any other objective evidence, I find the applicant's advertised corporate rates are the best evidence of value for his services. I find a reasonable value for the applicant's work is as set out in the corporate pricing document, less the agreed reduction of \$125 for the first headshot. Therefore, I find a reasonable value is \$250 per headshot. I find the respondent must pay the applicant a total of \$2,100 (8 x \$250 plus 5% GST).
20. The applicant claims \$2,000 for unauthorized use of his images. There is no evidence that the parties had any specific discussion about use and again, there is no written contract. The corporate pricing document says the client receives "unlimited usage" rights on "retouched" images. I find it is reasonable to infer that the respondent would have to pay for these images before using them. Since, it did not pay, the applicant argues that the respondent was unjustly enriched, and he should be compensated \$2,000. I find the applicant has not established the basis or the value of his unjust enrichment. He has also not demonstrated that he suffered

any loss other than the non-payment of fees. So, I decline to award any damages for the unauthorized use of the images. I dismiss this aspect of the applicant's claim.

21. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$2,100 for the headshots and services, which I have calculated from September 12, 2018, the date of the invoice, to the date of this decision. This equals \$40.00.
22. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As the applicant has been partially successful in this dispute, I find he is entitled to reimbursement of half his tribunal fees (\$87.50) and half his dispute-related expenses (\$5).

## ORDERS

23. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$2,232.50, broken down as follows:
  - a. \$2,100.00 as payment for the headshots and services,
  - b. \$40.00 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$92.50 for \$87.50 in tribunal fees and \$5.00 for dispute-related expenses.
24. The applicant is entitled to post-judgment interest, as applicable.
25. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

26. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Trisha Apland, Tribunal Member